

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

FILED

FEB 28 2005

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
DEPUTY CLERK

UNITED STATES OF AMERICA,

v.

JOSHUA ABELL

CRIMINAL NO. SA 04 CR 681 OG

**MEMORANDUM AND RECOMMENDATION**

Pursuant to the referral by the district judge, the defendant, defendant's attorney and the attorney for the government appeared before the undersigned magistrate judge on February 28, 2005, for the purpose of defendant's entry of a plea of guilty. At that time defendant entered a guilty plea as stated in the record. The magistrate judge addressed the defendant personally in open court and, after assuring that defendant was competent to proceed and had consented to pleading guilty before a magistrate judge, admonished the defendant in accordance with Rule 11, Fed.R.Crim.P., of the nature of the charge, the possible penalties, defendant's constitutional and statutory rights, and the consequences of pleading guilty. Defendant acknowledged understanding these admonishments. The undersigned also addressed defendant concerning the voluntariness of the guilty plea. Finally, the undersigned assured the existence of a factual basis for the guilty plea. Based upon the answers to the court's questions from defendant and from counsel, the magistrate judge makes the following findings:

1. the defendant is competent to stand trial;
2. the defendant has consented to plead guilty before a magistrate judge;
3. the defendant fully understands the nature of the charge and the penalties;

4. the defendant understands defendant's constitutional and statutory rights and desires to waive them;
5. the defendant's plea is freely, knowingly and voluntarily made; and
6. there is a factual basis for the plea.

### **RECOMMENDATION**

It is, therefore, the recommendation of the Magistrate Judge that the guilty plea be **ACCEPTED** and that a judgment of guilt be entered against defendant.

### **Instructions for Service and Notice of Right to Appeal / Object**

The United States District Clerk shall serve a copy of this Memorandum and Recommendation on all parties either (1) by certified mail, return receipt requested, or (2) by facsimile if authorization to do so is on file with the Clerk. Pursuant to Title 28 U.S.C. Section 636 (b) (1) and Rule 72 (b), Fed.R.Civ.P., any party who desires to object to this report must serve and file written objections to the Memorandum and Recommendation within 10 days after being served with a copy unless this time period is modified by the district court. A party filing objections must specifically identify those findings, conclusions or recommendations to which objections are being made and the basis for such objections; the district court need not consider frivolous, conclusive or general objections. *Such party shall file the objections with the clerk of court, and serve the objections on all other parties and the magistrate judge.* A party's failure to file written objections to the proposed findings, conclusions and recommendations contained in this report shall bar the party from a *de novo* determination by the district court. *See Thomas v. Arn*, 474 U.S. 140, 150, 106 S.Ct. 466, 472, 88 L.Ed.2d 435 (1985). Additionally, any failure to file written objections to the proposed findings, conclusions and recommendation contained in this Memorandum and Recommendation within 10 days after being served with a copy shall bar the aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district

court. *Douglas v. United Services Automobile Association*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

SIGNED FEBRUARY 28, 2005.

A handwritten signature in black ink, appearing to read "Nancy Stein Nowak". The signature is written in a cursive, flowing style.

NANCY STEIN NOWAK  
UNITED STATES MAGISTRATE JUDGE